Intellectual Property Copyright and IP Enforcement @ CIPC

SOUTH AFRICA'S EXPERIENCE WITH CAPACITY-BUILDING AND TRAINING ACTIVITIES

September 2016



THE CIPC REGULATORY ROLE AND FUNCTIONS

In South Africa, the Intellectual Property (IP) Office is housed within the Companies and Intellectual Property Commission (CIPC). The CIPC is an agency of the Department of Trade and Industry (DTI).

THE 1997 COUNTERFEIT GOODS ACT

Promulgated the Counterfeit Goods Act in 1997.

The main vehicle used to enforce IPRs and it is derived from the Agreement on Trade Related Aspects of Intellectual Property Rights (the TRIPS Agreement)

It aims to protect right holders against trade mark counterfeiting and copyright piracy.

It conveys powers to enforce IPRs to three main government departments: the South African Police Service (SAPS), the South African Revenue Services, the Customs Divisions, and a special category of inspectors, CIPC

Copyright and IP Enforcement is responsible for the enforcement of IPR and promoting compliance

The main functions are:

- to do inspections in terms of the Counterfeit Goods Act,
 1997 and other relevant IP legislation
- liaise and interact with Government Law Enforcement Agencies, National and International Bodies that play a role in effective enforcement and Industry Associations
- to further ensure effective enforcement and compliance with the legislation and overall a better understanding of the importance of IPR
- the CIPC further provides support, infrastructure and enforcement remedies

Further Objectives

Effective enforcement of qualifying and legally protected IP rights;

Creating awareness with all stakeholders including the general public about the rights and responsibilities of IP;

Educating other law enforcement counterparts in customs and police departments;

Increasing the number of films and visual recordings that are being registered; and

Ensuring that we can reinforce the capacity of officials to feed South African policy-makers with the information they need to design effective policies as well as to strengthen enforcement against counterfeiting and piracy across the country.

CONCURRENT RESPONSIBILITY

The CIPC is the custodian and responsible for the administration of the Act

Implementation is done together with CIPC Inspectors appointed through the CGA and the

Customs division of the South African Revenue Service (SARS) and the

South African Police Service (SAPS)

Fostering a close working relationship with the Municipal and Local Government Authorities

Private sector stakeholders and role players (Rights Owners)

SOUTH AFRICAN WIPO PARTNERSHIPS

WIPO was instrumental to the positive results South Africa has had with the Strategic Goal VI-approach,

to balance public and private interests in the protection and enforcement of IPRs.

CAPACITY

IDENTIFYING AND ENHANCING SKILLS

Guidance and advice on how to enhance skills of the LEA and delivered **relevant and practical training**.

Customizing of specific activities and adapting existing International best practices and training material to serve the specific and unique needs of South Africa.

We also pursued opportunities through the:

- WIPO Academy,
- WIPO Regional Bureau for Africa,

The hands-on approach adopted by the **Building Respect for IP Division** worked particularly well in addressing South Africa's needs in this area

Long Term Relationship

November 2003, the first workshop to foster cooperation between the various government departments and to open up the world of global enforcement to local participants.

Since then there have been many subsequent workshops, each one building on existing capacity or addressing a

specific identified need.

- 2008, a Consultation Workshop on the Enforcement of IPRs within the Southern African Development Community (SADC) was held.
- 2009, Enforcement workshop on combating counterfeiting within SADC took place, which was followed by a workshop on combating counterfeit medicines in the South African market.

Long Term Relationship

- 2011, South Africa hosted an International IP Conference to showcase the value and virtue of IP in a developing world context and set a benchmark within the global IP community.
- 2014 Following on from these successful activities, a Colloquium on Building Respect for IP for members of the Judiciary of the SADC countries
- 2015 Workshop on Building Respect for IP for prosecutors and senior police officers of selected countries of Southern Africa.

BUILDING RESPECT FOR IP PROSECUTORS AND SENIOR POLICE OFFICERS

The theme and topics for the workshop were formulated following extensive consultation with all stakeholders.

All concurred that the weakness in the enforcement chain was the lack of synergy between the SAPS investigators or CIPC inspectors and the National Prosecuting Authority prosecutors.

When the IPR cases reach the court system progress is typically very slow. It was also noted that there was a lack of cooperation between the law enforcement partners, and there appeared to be a general reluctance to pursue action in criminal matters.

BUILDING RESPECT FOR IP PROSECUTORS AND SENIOR POLICE OFFICERS

Role of the prosecutor and the relationship with the investigator should not be underestimated to achieve positive results in criminal prosecutions.

They lead the evidence and guide the investigator they further demand orders for the destruction of infringing goods.

Creating awareness with prosecutors permeate through to the judiciary, including magistrates and judges, and inform them of the seriousness of IP crimes and how to deal not only with the offenders, but also with the infringing goods and implements used in their manufacture.

Sentencing should also have a deterrent effect and destruction orders prevent infringing goods finding their way back into the channels of commerce.

Key outcomes of the Training

A new awareness among prosecutors and senior investigators of the social and economic impact of counterfeiting and piracy

An introduction to the WIPO Training Manual on IP Crime Prosecution

A thorough understanding of the policy basis for criminal sanctions and the proportionality in sentencing; and

The acknowledgement of how important the environmentallysensitive disposal of infringing goods is.

Investigating and Prosecuting IP Crime

Former Deputy President of the South African Supreme Court of Appeal, the Honorable LTC Harms to wrote a manual based on the TRIPS Agreement requirements for WIPO. This tool for capacity building is being used by WIPO at training session all over the world.

With consent of WIPO it was adapted to suit South Africa's legislative environment and needs.

The manual was launched in August 2016 through a training workshop that resulted in the certification of 38 SA prosecutors and spesialized investigators.

CO-OPERATION

The efficiency with which counterfeit and pirated products are being combated in South Africa depends on:

- the internal working relationship of all government agencies responsible for the enforcement of the Act,
- the co-operation and commitment of the IP holders, their agents and representatives and
- creating a general awareness with the public
- Effective cooperation with international counterparts through specifically designed structures supported by WIPO, WHO, WTO, INTERPOL and others

Concluding

Cooperation on issues such as information sharing and training is very valuable and can alleviate many of the problems and risks associated with trade mark counterfeiting and copyright piracy.

Strong collaboration and the regular exchange of information and success stories between all involved in building capacity is a winning formula.

The Building Respect for IP Division of WIPO is the one partner that a country cannot be without to enable you to achieve your objectives.

THANK YOU

CONTACT DETAILS FOR ENQUIRIES:

Tel: 012 3941512 / 082 497 4605

alotheringen@cipc.co.za

Physical Address	Postal Address	Customer Contact Centre
	Companies	
the dti Campus Block F	P O Box 429	National: 086 100 2472
Sunnyside	Pretoria	International: (+27) 83 900 2427
0001	0001	

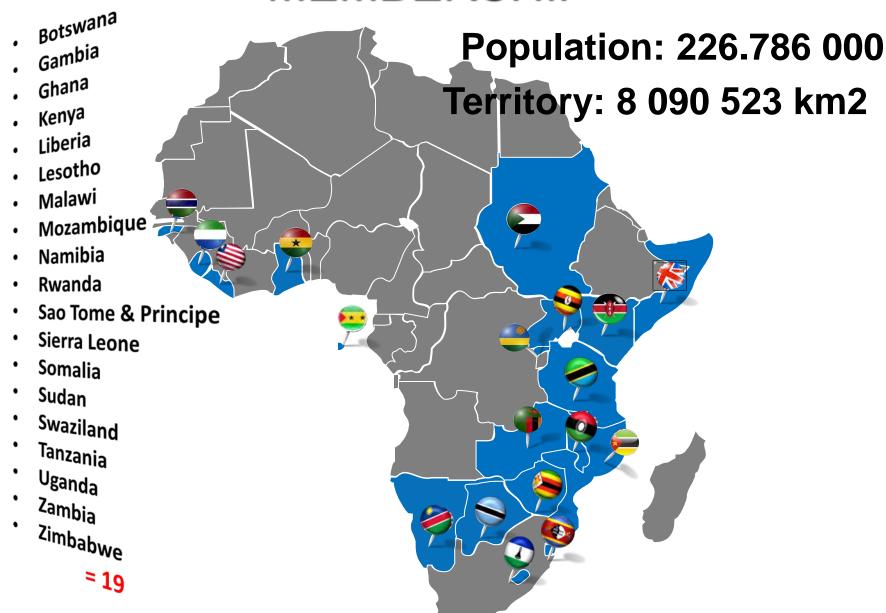


WIPO Advisory Committee on Enforcement 11th Session

Capacity Building and Support from WIPO for Training Activities: The Experiences of the African Regional Intellectual Property Organization (ARIPO)

Fernando dos Santos Director General

MEMBERSHIP



ARIPO Mandate on Training

 Establish schemes for the training of staff in the administration of intellectual property (IP) laws

 Organize training and awareness initiatives for stakeholders

Promote the exchange of ideas and experiences on IP

Conduct research studies in the field of IP

ARIPO Achievements on Capacity Building

 1992-2016: 112 training and awareness activities on IP at ARIPO and in its Member States

 Direct beneficiaries: 4800 participants from ARIPO member States and other African countries

 2008 - 2016: 218 Master of IP graduates from 25 African countries

Relevant capacity building initiatives on IP Enforcement

- Sub-regional Seminar for Heads of Copyright Offices, Lusaka,
 Zambia, May 9 to 12, 2011
- Regional Workshop on the Enforcement of IPRs for the Judiciary and Law Enforcement Officials, Lusaka, Zambia, July 26 to 27, 2012
- Training Workshop for Heads of Police Academies of the Member States, Harare, Zimbabwe, July 9 to 11, 2014
- Training of Trainers Workshop on the Teaching of IP in Police Academies of the ARIPO Member States, Harare, Zimbabwe, June 8 to 12, 2015
- USPTO/ARIPO IP Enforcement Workshop, Accra, Ghana,
 September 16 to 18, 2015

PARTNERSHIPS: WIPO, INTERPOL, USPTO AND EUIPO

Impact

- Immediate beneficiaries: 112 participants
- All ARIPO Member States and other African Countries
- Beneficiaries were from different enforcement agencies:
 Judges, Prosecutors, Police, Customs and IP Officers
- Particular relevance was the "Training of Trainers" from Police Academies. As a result:
 - Commitment to introduce IP teaching in Police Academies
 - IP Module introduced in Police Academies in Kenya, Gambia, Malawi, Namibia, Zambia and Tanzania
- Opportunity of exchange of ideas and experiences on IP enforcement initiatives at the national level
- Development of the manual for training of police officers and prosecutors on investigating and prosecuting IP crime by WIPO

COSOTA/Police introducing the IP module in the Dar es Salaam Police Academy - Tanzania



Recommendations

- Promote teaching of IP in IP Enforcement Agencies Training Institutions
- Promote other initiatives such as summer schools, retreats
- Develop tailor-made programmes targeting specific area or agency in order to tackle specific issues faced in that sector
- Involve private sector in the awareness and training initiatives on IP (Technical tips and insights identification of counterfeit products)
- Develop and disseminate training materials
- Use local expertise for training initiatives such as WIPO/ARIPO Master of Intellectual Property graduates

- ► African Regional Intellectual Property Organization (ARIPO)
- ► Address:11 Natal Road, Belgravia, Harare, Zimbabwe
- ▶ Tel: +263 4 794 065 /6/8/54/74
- Fax: +263 4 794 072
- Email: fsantos@aripo.org
- mail@aripo.org
- Website: www.aripo.org

WIPO's Capacity-Building Activities to Build Respect for Intellectual Property

The balanced approach to building respect for IP and to IP enforcement in particular

The target audience at capacity building seminars

Criminal enforcement role players:

- Judiciary
- Law enforcement officers
- Customs officials

Civil enforcement role players

Judiciary



The countries

Developing countries

- Africa
- Caribbean
- Middle East
- South East Asia
- Far East

The laws

- English common-law
- Civil-law
- Mixed law
- Different IP law levels:
 - TRIPS compliant
 - TRIPS minus
 - TRIPS plus

Focus

- TRIPS requirements
- Basic IP principles
- Basic enforcement provisions
- Criminal enforcement:
 - Counterfeiting
 - Piracy



Balanced approach

The state of the s

- Law is about balance:
 - Subject to subject
 - State to subject
- But laws themselves are NOT necessarily
 - Balanced OR
 - Permit balancing by the judiciary

Unbalanced laws

Laws themselves may fail to provide proper balance

Possible reasons

- Temporary political/economic issues
- Trade agreements
- Unintended consequences
- Legislative inertia

Why the concern about balance in IP law and enforcement?

- International norms
- But
 - Adoption, interpretation and enforcement are subject to local law and custom.
 - IP foreign/new to many societies.
 - Lack of exposure.
 - Lack of legal education.
 - Lack of experience.

TRIPS on balancing rights

Article 7: Objectives

- The protection and enforcement of intellectual property rights should contribute
- to the promotion of technological innovation and to the transfer and dissemination of technology,
- to the mutual advantage of producers and users of technological knowledge
- and in a manner conducive to social and economic welfare, and
- to a balance of rights and obligations.

TRIPS flexibilities

Matter for statute law

Two general types

- Substantive
- Enforcement
 - No specialized IP courts

Enforcement flexibilities

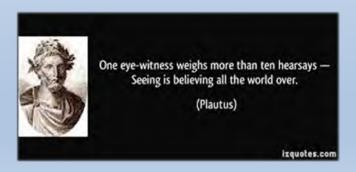
- Enforcement in other IP cases: Art. 61, Art 51 (2nd sentence)
- Wilfulness
- Commercial scale
- Sentences
- Small consignments: Art. 60
- Ex officio border measures

Civil flexibilities

- Uncooperative parties: Art. 43.2
- Injunctions: Art. 44.1 (2nd sentence)
- Damages: Art. 44.2 (2nd sentence)
- Damages: Art. 45.2
- Right of information: Art. 47, Art. 57 (2nd sentence), Art. 58(a)
- Destruction: Art. 59 (exceptional circumstances)

The effect of Art 7

- Seeing is believing.
- Effect not (always) visible in developing world.
- Does IP, in the "Third World", create more false hopes and misplaced expectations than material benefit?



Consequences

- IP-phobia
- IP considered "special" and "difficult"
- Over-awed by new technology
- Enforcement out of balance
- Non existent rights acknowledged
 - Plagiarism
 - Grey goods
 - Generics
- Real rights denied
- Irrelevant considerations taken into account

Topics

Balancing covers every aspect but some will be highlighted.

- Balancing IPRs
- Justification of IP crimes
- Law enforcement priorities
- Prosecuting IP crimes
- Sentencing IP crimes



CONCLUSION

- Change of centre of gravity.
- Justify rights.
- Consider IPR enforcement in a social context.
- Regard legitimate public rights.
- Moving away from counter-productive enforcement.









MINISTERIO DE ECONOMÍA EL SALVADOR

8 Septiembre de 2016





ACTIVIDADES DE COOPERACIÓN OMPI-EL SALVADOR Medidas de Observancia

I. Taller "Subregional de la OMPI sobre el fomento del respeto por la propiedad intelectual para fiscales e investigadores"

II. Diplomado Judicial en Materia de Observancia

III. Establecimiento de la Academia de Propiedad Intelectual

"Taller Subregional de la OMPI sobre el fomento del respeto por la propiedad intelectual para fiscales e investigadores"

OBJETIVO:

 Promover el respeto de la propiedad intelectual, a través del fomento de las capacidades de funcionarios públicos; así como representantes del sector privado, vinculados con el tema de observancia de los derechos de propiedad intelectual en El Salvador y en América Latina.



"<u>Taller Subregional de la OMPI:</u> sobre el fomento del respeto por la propiedad intelectual para fiscales e investigadores"



"<u>Taller Subregional de la OMPI:</u> sobre el fomento del respeto por la propiedad intelectual para fiscales e investigadores"



"<u>Taller Subregional de la OMPI</u> sobre el fomento del respeto por la propiedad intelectual para fiscales e investigadores"

- Resultados: Experiencia El Salvador
- La actividad cumplió con las expectativas y objetivos.
- El contenido de la actividad se impartió teniendo en cuenta las necesidades en materia de capacitación de los países de América Latina, haciendo énfasis en la realidad de El Salvador y de los países Centroamericanos.



"<u>Taller Subregional de la OMPI</u> sobre el fomento del respeto por la propiedad intelectual para fiscales e investigadores"

- Resultados: Experiencia El Salvador
- El Salvador considera que se deben continuar realizando actividades similares a nivel regional en América Latina.
- Explorar la posibilidad de un taller de seguimiento de dicha actividad.



DIPLOMADO JUDICIAL EN MATERIA DE OBSERVANCIA

Cooperación OMPI

- Programa de capacitación para jueces en materia de observancia de la propiedad intelectual, mejorando sus capacidades para analizar infracciones y aplicación de sanciones en PI.
- Organizado conjuntamente con la Escuela de Capacitación Judicial, Centro Nacional de Registro, Ministerio de Economía y OMPI.
- Se han capacitado hasta la fecha 75 jueces.

Academia de Propiedad Intelectual de El Salvador

Cooperación OMPI

- En el mes de noviembre del año 2015, se firmó el "Acuerdo de Cooperación entre el Centro Nacional de Registros de El Salvador y la Organización Mundial de la Propiedad Intelectual (OMPI)".
- Actualmente 22 funcionarios son aspirantes para convertirse en formadores de los derechos de propiedad intelectual.





MUCHAS GRACIAS !!!









CAPACITY BUILDING TRAINING ACTIVITIES FOR ENFORCEMENT OFFICIALS IN DEVELOPING COUNTRIES UTILIZING JAPAN FUNDS-IN-TRUST, ETC.



Shinji Igarashi Deputy Director International Cooperation Division Japan Patent Office (JPO) September 7, 2016



Topics

- 1. Training activities for enforcement officials organized by WIPO and which are funded through JAPAN Funds-in-Trust
- 2. Capacity building activities by other relevant organizations for enforcement of IP
- 3.JPO's unique support to sustain trainees' achievements and motivations

1.1 Outline of Japan Funds-In-Trust



WIPO Japan Funds-in-Trust (FIT/JP)

- Established in 1987 for Asia-Pacific Region
- FIT for African Region set up in 2008
- To assist developing countries to promote self-sustained economic development through intellectual property system



Main Objectives

- Awareness promotion of the importance of the industrial property system
- Assistance to developing countries in establishing/strengthening their industrial property laws and institutions
- Development of human resources

1.2 Training activities



2015 (FY) Training Course on the Enforcement of Intellectual Property Rights under the WIPO Fundsin-Trust /JAPAN in Japan, Nov. 30 - Dec. 10

- Training course was organized utilizing JAPAN FUNDS-IN-TRUST
- Various and effective lectures such as:
 - "IP and Applicable Enforcement Related Legislation"
 - "Enforcement of Trademarks and Copyrights"
 - "A Balanced Response to Counterfeiting and Piracy"
- "Civil Remedies for IP Infringement" were made by WIPO lecturers.

1.2 Training activities



Challenges for Fruitful Training

- Trainees were limited to judges
 - > Specialized seminar for judges
- Introduced mock trials for the first time
 - > Practical method to improve judgement skills
- Practical observation tours to the JPO
 - and the IP High Court
 - > Giving various chances for necessary experience and knowledge



1.3 Workshop



WIPO-JPO -OMPIC Interregional Workshop on the Enforcement on IPR for Customs Officials in Casablanca, May 17 and 18, 2016

- Organized utilizing the WIPO/Japan Funds-in-Trust for Africa
 & LDCs during IP Week in Morocco
- Aiming at disseminating and raising awareness
 - of intellectual property in Morocco
- JPO and Japan Customs made presentations about countermeasures against counterfeits and border measures in Japan.





Topics

- 2. Capacity building activities by other relevant organizations for enforcement of IP
 - Capacity building activities for enforcement officials in developing countries and LDCs by Customs & Tariff Bureau in Ministry of Finance and Japan Customs
 - Capacity building activities on the Protection of Copyright and Related Rights by Japan Copyright Office, Agency for Cultural Affairs

2. Capacity building activities by other relevant organizations for enforcement of IP



Capacity Building Activities for Enforcement Officials in Developing Countries and LDCs by Customs & Tariff Bureau in Ministry of Finance and Japan Customs



-WCO Technical Cooperation with CCF/Japan

- National Seminars / Regional Seminars
- Expert Missions (Diagnosis / Technical Cooperation)
- Workshops
 - WCO (World Customs Organization)
 CCF (Customs Cooperation Fund)

2. Capacity building activities by other relevant organizations for enforcement of IP



Capacity building activities on the Protection of Copyright and Related Rights by Japan Copyright Office, Agency for Cultural Affairs



Under the Japan Funds-In-Trust on Copyright (APACE: Asia Pacific Copyright Enhancement Program)

- Special Workshop on the Protection of Copyright and Related Rights (JFY2015)
 - October 19 to 30, 2015 at Tokyo
 - 10 Officials from copyright offices and enforcement agencies from 5 countries in Asia
 - Lectures on copyright system and enforcement on internet piracy



Topics

- 3. JPO's unique support to sustain trainees' achievements and motivations
 - Holding Follow-up Seminars
 - Support through the website

3.1 Holding Follow-up Seminars



- The JPO conducts Follow-up Seminars for trainees who participated in the past trainings by the JPO.
- The purpose is to sustain trainees' achievements and motivations.
- Follow-up seminars were held in Vietnam, Lao PDR, Cambodia and Malaysia in 2015.
- For example, 121 participants joined Follow-up Seminar in Vietnam on October 6 and 7, 2015.

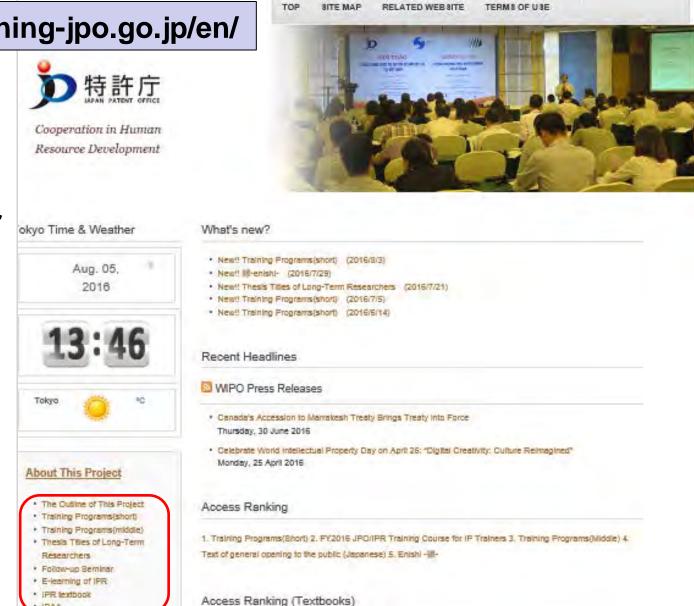
3.2 Support through the website



URL http://www.training-jpo.go.jp/en/

Web contents

- -Training programs
- -Follow-up Seminar Programs
- -Reports on Longterm Research fellows
- -IPR textbooks covering various areas





Conclusion



Thank you for your kind attention.



Advisory Committee on Enforcement, Eleventh Session

IP AWARNESS - BUILDING ACTIVITIES

Sultanate of Oman

The need of innovation and IP strategy

science, Technology and Innovation Policy Review (STIP Review)

TRC cooperated with UNCTAD organization in 2013 to prepare and evaluate the Science, Technology and Innovation Policies (STIP) review of the Sultanate of Oman



Recommendations:

- Develop a national mission statement and incorporate it into the national innovation strategy.
- in order to implement efficient STI policies for boosting the economic development of a country, it is necessary to have strong coordination from the very top of the State leadership

National Strategy for Innovation



Intellectual Property, current state

Challenges:

- ✓ Lack of independent organizations to create prototypes, the activities are mostly entrusted to external sources
- ✓ Immaturity of the IP system in Oman
- ✓ Absence of communication and cooperation between the organizations involved in knowledge marketing
- ✓ Weak research and innovative capacity that is able to produce, transfer
 and market knowledge
- ✓ Immaturity of the industrial sector that is able to absorb the outcomes of knowledge producing organizations

Intellectual Property Pillar

Vision

"Creating Knowledge based society, supported by effective IP rights protection system, and fostering the production of innovative ideas, goods and services at the national and international level" through:

- Institutional Capacity building
- Increase of entrepreneurial institutions with value added
- Achieving commercial returns from research and development via knowledge transfer
- Effective development of IP policy in Oman
- Raise awareness and public understanding of IP culture and its importance in sustainable development.

public understanding of IP culture and its importance in sustainable development

Strategic goal	Operational goals
Greater general and public understanding of the contributions made by IP based innovation and creativity in Society	 Identify issues and create and deliver public propaganda campaign on social and economic benefits of IP based businesses and dangers arising from activities involving counterfeiting and piracy, and in disregarding the IP of others Design and deliver educational modules on links between IP, employment, economic growth, innovation and society. The modules to be individually focused on: General understanding for all educational levels by preparing curricula consistent with each stage Introducing IP majors in related colleges, especially in colleges of law and higher studies Train educational staff on the concepts and basis of IP, and involve them in the preparation of related materials and curricula at various educational level

public understanding of IP culture and its importance in sustainable development

Strategic goal	Operational goals
Greater general and public understanding of the contributions made by IP based innovation and creativity in Society	 Create cross-government forum for discussion and dissemination of IP and innovation issues as influencing the economic development of the society, in addition to presenting the achievements based on research and innovation. Develop deeper understanding of issues relating to IP and its relationship with law, the economy and society, perhaps through developing IP curricula in existing higher education institutions, or establishing IP faculty. Encourage individuals and private entities to establish civil societies to spread awareness on IP, through adequate technical support. Dispatch IP and innovation outstanding and active students and individuals to related international events to strengthen their capacity and potentials in transferring knowledge and root it in the Omani Society.

Raise awareness and public understanding of IP culture and its importance in sustainable

the General Administration of Customs (efforts)

- IP awareness for public through media,...
- -Capacity building programs :
- -Specialized Training institute for customs staff. (workshops, lectures, courses,....)
- -Unified guide for customs procedures.

WIPO's sixth strategic goals:

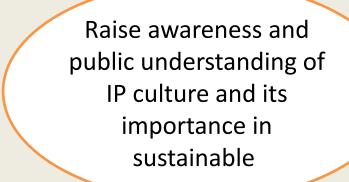
International Cooperation on Building Respect for IP

CHALLENGES!!!

- -The lack of IP knowledge
- the absence of IP department in the General Administration of Customs
- -The database and IP references are not available.

The Needs

- Proposal for IP department in the General Administration of Customs
- -Qualification of the customs staff!!!
- -Special courses organized by WIPO



WIPO's sixth strategic goals: International Cooperation on Building Respect for IP

EDUCATION: (programs)

- ✓ Many programs in all education levels.
- √ develop IP teaching program
- ✓ Introducing IP majors in related colleges.
- ✓ Train educational staff on the concepts and basis of IP.

Competition:
"Tourism and
Respect for IP" for
schoolchildren

- -Procedures
- -challenges
- -WIPO support

Thank you